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STATEMENT OF G. D. BEARDEN, DIRECTOR, BUREAU OF MANPOWER
SYSTEMS, BEFORE THE FOREIGN OPERATIONS AND GOVERNMENT IN
SUBCOMMITTEE OF THE HOUSE COMMITTEE ON GOVERNMENT OPERAT

April 30, 1974

MR. CHAIRMAN, I appreciate this opportunity to present the views of the Civil Service Commission on H.R. 13303, a bill "To amend title 5, United States Code, to provide that persons be given access to records concerning them which are maintained by Government agencies," and H.R. 13872, a bill "To amend title 5, United States Code, to provide for the privacy of individual's records maintained by Federal agencies." Previously, in commenting on similar bills such as H.R. 667, H.R. 1097, H.R. 1279, and H.R. 12206, all bills"To amend title 5, United States Code, to provide that persons be apprised of records concerning them which are maintained by Government agencies," the Commission has strongly opposed enactment of legislation of this nature because of the undue cost and administrative burdens enactment would place on this agency's operations without, in our opinion, valid cause. Although I realize that H.R. 13303 and H.R. 13872 were introduced following your earlier hearings on these similar bills, and that they contain a number of changes from the language contained in the earlier bills, I must renew our objections to H.R. 13303 and H.R. 13872 insofar as the direct impact of these provisions upon the current personnel management recordkeeping practices of Federal agencies.

The Commission has a deep concern with this proposed legislation since this agency's specific mission, personnel management for the Government, necessarily involves the collection, maintenance, and use of vast quantities of personal records. In actuality, a major portion of the Commission's

business is the task of personal recordkeeping. These records we are speaking of pertain to prospective, present, and past Federal employees, and the Commission's jurisdiction and responsibility concerning these records extends throughout the Executive branch at the Commission's direction and under the Commission's control. These records do not pertain to members of the public at large, but rather are a necessary product of the employer-employee relationship. In essence, these various personal records trace individuals from their application for Federal employment through their actual employment to and including separation and retirement from the Federal service.

The primary sources of authority for the Commission's recordkeeping practices are Executive orders issued by the President generally under authority of section 3301 and 3302 of title 5, United States Code. The major Executive Orders (or Civil Service Commission Rules derived from Executive Orders) delegating to the Commission authority and responsibility for collecting and maintaining personal information related to Government employment are as follows:

--Executive Order 10450 which requires the Commission to investigate applicants for Government employment for purposes of determining questions of suitability and security;

--Executive Order 10561 and Civil Service Rule 7.2 which delegate to the Commission extensive responsibility and jurisdiction for the maintenance, content, collection, transfer, and reporting of personal information concerning individuals who make up the Federal workforce (E.O. 10561 is the basis for the establishment of the Official Personnel Folder--the personnel file that is maintained for every employee in the Executive branch);

--Executive Order 10577 and Civil Service Rule 2.1 which delegate to the Commission the responsibility to determine through competitive examining procedures the relative capacity and fitness of applicants for Federal employment;

--Executive Order No. 11222 which delegates to the Commission the authority and responsibility for the Governmentwide system of reporting outside employment and financial interests for purposes of avoiding conflict-of-interest situations; and

--Section 8347 of title 5, United States Code which authorizes the Commissio to administer the Government retirement system. (The implementing regulation authorized by the statute and requiring the maintenance of individual records for this program is section 831.102 of title 5, Code of Federal Regulations.)

At this point, allow us to stress that the Commission does not object to the spirit of these bills. Rather, the Commission endorses the basic tenets of the bills which would:

First, permit any person to inspect his own records and have copies made at his expense;

Second, permit any person to supplement the information contained in his record;

Third, permit the removal of erroneous information of any kind, and provide that agencies and persons to whom the erroneous material has been previously transferred be notified of its removal;

Fourth, require the notification of the person if the record is disclosed to any other agency or person not employed by the agency maintaining such record;

Fifth, prohibit the disclosure of information of any kind in the record to individuals in the agency other than those who need to examine the record in the performance of their duties; and

Sixth, require the maintenance of a record of all persons inspecting such records.

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Existing Commission regulations concerning employment records to a great degree reflect these considerations. For example, the primary repository of personal information about a Government employee is his Official Personnel Folder. Under section 294.703 of the Commission's regulations an employee has a right to review most of the information in this folder. The Commission's regulations, however, also recognize that with regard to personal information concerning the employer-employee relationship the disclosure to the individual of certain types of information is not appropriate. Accordingly, Commisison regulations do not permit the disclosure to the individual of (1) medical information concerning a mental or other condition of such a nature that a prudent physician would hesitate to inform a person suffering from it of its exact nature and probable outcome (although this information will be disclosed to a licensed physician designated in writing by the individual for that purpose); (2) certain examining material such as actual competitive examinations and rating schedules which if disclosed would compromise the integrity of the competitive examining process; (3) reports of suitability or security investigations which if disclosed would compromise the sources of the information in the report (although the Commission will disclose to an individual such information from these reports as it determines sufficient to enable him to respond to an interrogatory or other question without revealing the source); and (4) in the discretion of the employing agency, supervisory appraisals of an employee's potential (although supervisory evaluations of employee past performance are disclosed to and discussed with the individual).

Our objection to H.R. 13303 and H.R. 13872 is that they contain no provision (with the exception of the provision which protects the identity of sources of information) which recognizes that some personal records generated through the employer-employee relationship such as those we have just mentioned must for sound administrative and policy reasons remain confidential.

The Commission's regulations also contain provisions which control who, other than the subject individual, shall have access to this personal information. Section 294.703(c) of title 5, Code of Federal Regulations, provides that Official Personnel Folders shall be disclosed only to those officials of the Executive branch who have a need for the information in the performance of their official duties. Section 294.702(a) strictly limits what information concerning Government employees is publicly available, for example, in response to requests under the Freedom of Information Act. That regulation states that an employee's name, grade, salary, present and past position titles, and duty station are items of public information. but restricts the availability of lists containing such information.

Paragraph (a)(1) of the proposed 5 U.S.C. 552a provides that an individual's record cannot be disclosed to another agency except with notification to the individual concerned. There are a number of programs for which the Commission is responsible that require maintaining and releasing to other agencies information about individuals. One of the largest of these is the competitive examining system; other examples are the Federal Automated Career System (FACS) and the Displaced Employee Program. Of

great concern is the fact that paragraph (a)(1) appears to intend that the individual be notified before each release of information, and that he be told specifically where that information is going. Compliance with this provision would be extremely costly and time consuming. For instance, thus far in Fiscal Year 1974, the Commission has referred to agencies the names of approximately 1,036,000 applicants for Government employment from our registers and over 25,000 from FACS. In addition to the obvious expense the proposed notification would entail, there would be substantial delay in providing referrals to agencies and, thus, a substantial delay in filling vacancies. We assume that applicants for Federal employment want us to refer their names to employing agencies and that this unfortunate effect of the bill was not intended. But the failure of these bills to account for its peculiar impact on the Govenment as an employer - an impact which falls upon no other employer in the United States - does produce this odd result.

Besides information going from the Commission to other agencies, there are instances where agencies need to provide, or the Commission needs to obtain from them, information about an individual. For instance, an agency may obtain information about a candidate which, in the agency's view, demonstrates that the individual is unqualified for the position in question; the agency must submit this information for the Commission's consideration if it wants the individual removed from the referral list. Paragraph (a)(1) would require notification to the individual before such a submission. This would cause delays in staffing positions generally without providing any benefit to the individual. In addition, the Commission requires each agency to submit to it a copy of Standard Form 50 (Notification of Personnel Action)

whenever it executes a personnel action involving an employee, e.g., promotion, change of position or title, etc. We estimate that there are approximately 2-1/2 personnel actions per employee per year. Given the size of the Federal workforce, 2.8 million employees, this means we receive approximately seven million of these personal records each year. Presumably the notification requirement is met with respect to these particular forms since the employee also receives a copy, but there are other circumstances under which agencies are required to submit information for which notification in each instance would be impracticable or not feasible. This would be true, for example, of inquiries into the possibility of political selection, nepotism, and other administrative examinations.

With regard to the administration of the Government retirement program, it is necessary that we furnish to the Treasury Department computer tapes which have the annuitant's name, address, and net monthly annuity in order to issue a check. Under paragraph (a)(1) it would appear that every time this information is furnished to Treasury, the individual would have to be notified. We would view this requirement as imposing a totally unnecessary cost on the Government.

Paragraph (a)(3) would require an agency to maintain a record of the names and addresses of all persons to whom information contained in a record is divulged and the purpose for the divulgence. We think, the requirement to maintain the specific names and addresses of all persons is simply unrealistic. We have suggested in an attachment to this statement an amendment to this paragraph that would provide that the maintenance of organizational

destination and address of the recipient office together with the purpose for the disclosure should suffice. With regard to employment-related records, which we have explained are transferred among agencies in great numbers, records are presently maintained concerning the organizational designation and address of the recipient office, and if paragraph (a)(3) could be changed along the lines we have suggested, the revised requirement would entail little additional cost with regard to our operations.

Paragraph (a)(4) requires an agency to permit an individual to inspect his record and have copies made of it. We have previously commented on our concern with regard to across the board access to employment-related records, but we also wish to comment upon an additional problem posed by this paragraph which we don't believe is addressed by any other provision of the bill. It is unclear from paragraph (a) (4) whether an agency is required to permit an individual to examine a record which contains personal information about him in its entirety, or whether access may be limited to only those portions of the record which pertain directly to him. If access to the entire record is contemplated, inspection by an individual may in some instances necessarily lead to the disclosure of information concerning a third party who is also a subject of the record. For example, when the Commission receives a request from an agency for candidates to fill a position, it provides a certificate of eligible individuals in response to the request. This certificate lists eligible candidates by name, social security number, and competitive examination score--it is, in essense, a competitive ranking of individuals. While the Commission presently discloses to any individual his own score and position on the

certificate, it will not disclose the other names on the certificate nor the scores of other competitors. It is unclear whether paragraph (a)(4) would require that we allow the individual to inspect the entire certificate or whether inspection could be limited by deleting the names, social security numbers, and scores of other individuals To avoid a possible result that would, in essence, permit an invasion of the privacy of a third party in instances such as this, we have suggested in our attachment an amendment to this paragraph which would make it clear that an individual is entitled to see only that portion of a record which pertains to him.

Paragraphs (a)(5) and (a)(6) permit a person to supplement the information contained in his record by addition of any document or writing of reasonable length which he deems pertinent, and require an agency to remove erroneous immaterial, or irrelevant information of any kind and notify all agencies and persons to whom the erroneous material has been previously transferred of its removal. We certainly agree that an agency should strive to insure that the records it keeps are accurate, but we must object to these provisions as they are presently drawn.

Generally speaking, with regard to our manual systems, these provisions would not cause serious administrative problems since we are presently willing to accept almost anything an individual wants to include in his file, particularly in a file relating to his qualifications. The effect on our automated systems, however, would be unduly burdensome. Some of these systems, such as our Central Personnel Data File (CPDF) are maintained solely for purposes of statistical reporting and research. We will subsequently

explain our opinion with regard to the application of these bills generally to these statistical systems. Other existing and planned systems such as the planned Federal Personnel Manpower Information System (FPMIS) are properly considered administrative systems, or systems whose maintenance and use directly affect individuals. With regard to our automated systems, we limit the information supplied by an individual through the use of specific forms we provide.

We plan to use this type of limitation in connection with all automated systems we will be implementing over the next years. In these cases, we consider that the individual has or will have the opportunity to supply all information about his background necessary for the purposes for which these systems are designed. A requirement to accept even a reasonable amount of supplementary material of the individual's choosing for inclusion in the automated systems would result in sharply increased operating costs, and with respect to some of these systems we are planning, could make the systems completely impractical.

In our attachment, we have provided language which we believe presents a practical approach to this problem. In essence, we suggest that when an individual wishes to supplement or dispute the completeness or accuracy of his record, it would be sufficient for the agency to note this fact in the record without necessarily including additional material in that record. In this manner, any document or writing an individual submits may be kept separate from the actual record system and retrieved

whenever his record is considered. This would avoid the costs which would necessarily be incurred by requiring that such information be maintained in the automated system.

The bill as presently drafted makes no distinction between administrative records, i.e., records whose maintenance and use directly affects individuals, and records maintained for statistical or research purposes. As Mr. McFee pointed out in his testimony on H.R. 12206 before this Subcommittee, "If an agency can guarantee that a record it maintains about an individual will be used only for statistical reporting and research, nothing will be gained (and indeed a great deal of time and effort may be lost)" if the various provisions of subsection (a) are applicable to these records. We concur entirely with this position and would support any amendment which would achieve these ends.

Finally, we are concerned with the effect these bills may have upon the Commission's suitability and security investigations program.

We interpret the proposed bills as not applicable to the Commission's investigative files and records because of our interpretation of the provisions of Executive Order 10450, Security Requirements for Government Employment. Section 9 of that order deals with maintenance of investigative files and records. In particular, Section 9(c) reads in part as follows:

> Such reports and other investigative material and information shall be maintained in confidence, and no access shall be given thereto except, with the consent of the investigative agency concerned, to other departments and agencies conducting

security programs under the authority granted by or in accordance with the said act of August 26, 1950, as may be required for the efficient conduct of Government business.

We construe the words "kept secret" in the proposed bills as being used generically to mean the same as "in confidence" in Section 9(c) of the Executive order. If this interpretation is not correct, then the workload implications discussed above would be increased greatly by the addition of large numbers of investigative files and records. These include ten million card records in the Security Investigations Index File, 625,000 investigative file folders in the Investigative Files, and an additional 2,000,000 earlier files of the same type maintained at the Federal Records Center where they are available for use when needed.

In our attachment, we have suggested language which we believe would eliminate this doubt as to whether or not these investigatory files are subject to the bills' provisions. We believe that all files and records under the control of the Civil Service Commission are maintained in a fair and reasonable manner. It is highly unlikely that most individuals whose records are maintained by or at the direction of the Commission are unaware that the records are being kept, and the Commission is most careful in preventing any unwarranted disclosure to outside persons of information from the records it controls.

The application of the provisions of these bills to Government employment-related records would in our opinion severely disrupt the personnel management processes of the Government and impose, in our view,

unnecessary costs on these operations. We have roughly estimated that the additional costs attributable to the application of these provisions to Government employment-related records would be in excess of thirteen million dollars per year. These bills have the apparent intention of dealing generally with records maintained by the Government on members of the public whose affairs cause them to have to deal with the Government--such as a person who seeks certification as a pilot, or a social security beneficiary. Their effect on the Government as an employer seems to have occurred haphazardly, and without apparent direction. Accordingly, in our attachment we have provided language, in addition to that previously discussed which would amend these bills with regard to all types of personal records, that would except entirely from the bills records maintained for purposes of Government employment. We urge that these bills be amended to that effect.